REMARKS

In the final Office Action dated February 5, 2010 (paper no. 20100125), the Examiner rejected claims 1-5, 37-41, 44-45, and 52-57 under 35 U.S.C. § 103(a) over U.S. Patent Application Publication No. 2003/0110503 by Perkes ("Perkes"), U.S. Patent Application Publication No. 2002/0056123 by Liwerant et al. ("Liwerant"), and U.S. Patent Application Publication No. 2002/0152432 by Fleming ("Fleming"); rejected claims 6 and 42 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and U.S. Patent No. 6,854,010 to Christian et al. ("Christian"); rejected claim 7 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and U.S. Patent No. 6,617,879 to Chung ("Chung"); rejected claims 8, 43, 46-49, and 51 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and Fleming; and rejected claim 50 under 35 U.S.C. § 103(a) over Perkes, Liwerant, Fleming, and Christian.

In this response, applicants amend claims 1-4, 7, 8, 37, 38, 41, 43-49, and 52-57; cancel claims 5, 40, 50, and 51; and present new claims 58-63. Claims 1-4, 7, 8, 37-39, 41, 43-49, and 52-63 are currently pending in this application.

A.   Perkes

Perkes describes a system for presenting media on demand. (Perkes, Abstract.) A viewer may view and/or schedule the delivery of broadcast segments. When a broadcaster is ready to deliver a broadcast segment to the viewer, Perkes determines the on line or off line status of the viewer's computer. If the viewer's computer is on line, the viewer is provided with information about the broadcast segment, and is given the option to accept or refuse download of the segment. If the viewer accepts, the segment is downloaded to the viewer's computer via the Internet. (Perkes, ¶¶ [0078], [0125].)

B.   Liwerant

Liwerant describes a system for sharing a video segment over a computer network. (Liwerant, Abstract.) Liwerant may present a user with a web page form to collect information from the user in connection with a video segment, including payment

information, specifications such as resolution and/or image quality, and an additional copy of the files, such as a copy recorded on CD-ROM and sent to the user by the postal service. (Liwerant, ¶ [0052].)

C. Fleming

Fleming describes a method for detecting process and network failures in a distributed system. To detect a network or process failure, Fleming determines whether a communication is received within a threshold or time limit. If not, the network or process is suspected of failing, and a corrective action (e.g., eliminating and/or replacing a failed process) can be taken. (Fleming, ¶¶ [0018], [0020], [0025].)

D. Rejections under 35 U.S.C. § 103(a)

Claims 1-4, 7, 8, 37-39, 41, 43-49, and 52-57 stand rejected under 35 U.S.C. § 103(a) over Perkes and Liwerant, in some cases in combination with additional references, including Fleming. Applicants respectfully traverse these rejections.

Independent claim 1, as amended, recites "determining whether a time associated with a most recently received communication from the client system is within a certain time period" and "based on the determining, evaluating whether to send the image to the client system via the communications link or via a mechanism other than the communications link."

Applicants respectfully submit that the applied references, whether alone or in combination, fail to disclose or suggest this recited feature. At most, Perkes describes a Master Agent that determines the on line or off line status of a viewer's computer. If the viewer's computer is on line, Perkes provides the viewer with information associated with a broadcast segment and allows the viewer to download the segment via the Internet. (Perkes, ¶¶ [0078], [01215].) However, Perkes does not disclose or suggest how the on line or off line status of a viewer's computer is determined, and in particular does not disclose a determination that is made based on "a time associated with a most recently received communication" from the viewer's computer. Moreover, Perkes does

not disclose or suggest "determining whether a time associated with a most recently received communication from the client system is within a certain time period," as recited. Nor does Perkes inherently disclose the recited determination. Perkes may reasonably determine the on line or off line status of a viewer's computer without considering a communication from a viewer's computer at all. For example, Perkes' Master Agent may simply initiate a communication to the viewer's computer, without determining whether a communication has previously been received from the viewer's computer. In addition, Perkes fails to disclose "evaluating whether to send the image to the client system via the communications link or via a mechanism other than the communications link" based on the recited determination.

Nor does Fleming disclose or suggest this recited feature, whether alone or in combination with Perkes. At most, Fleming describes an administrative function performed by a distributed system to detect failure of one or more networks or processes. If a failed network or process is detected, a corrective action (e.g., eliminating and/or replacing a failed process) can be taken. To detect a network failure, Fleming compares the difference between a period of time for process A to receive a heartbeat from process B on a first network, and a period of time for process A to receive a heartbeat from process B on a second network. If the difference exceeds a network failure threshold, the second network is suspected of failing. (Fleming, ¶ [0018].) To detect a process failure, Fleming determines whether a heartbeat is received from any process in a system prior to expiration of a process failure time limit. For example, Fleming measures the difference between a time a last heartbeat was received from a process and a later instance in time. For any process from which a heartbeat is not received, the process is suspected of failing. (Fleming, ¶¶ [0020], [0025].)

However, while Fleming describes determining whether a communication is received within a threshold or time limit, unlike applicants' techniques, Fleming does not disclose or suggest "evaluating whether to send the image to the client system via the communications link or via a mechanism other than the communications link" based on

this determination. Fleming simply eliminates or replaces a failed process based on the determination.

Moreover, the Examiner has not articulated a rational apparent reason to combine Perkes and Fleming to arrive at any of applicants' claims, and has thereby failed to establish a *prima facie* case of obviousness. (*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *see also In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993).) "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal standard of obviousness." (*KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).). The Examiner states that one of ordinary skill in the art would have been motivated to combine Perkes and Fleming "for the purpose of providing for detecting process and network failures in a distributed system the user a convenient, optimal viewing quality, enhanced security." (Office Action, Feb. 5, 2010, pp. 4, 21-22.) However, the first half of this statement is merely a recitation of the object of an individual reference (see Fleming, ¶ [0005]), rather than an articulated reason with rational underpinnings of why it would have been obvious to one skilled in the art to combine the applied references to arrive at any of applicants' claims. The second half of this statement is merely a recitation of the object of another individual reference (Liwerant, ¶ [0139]) that, while subsequently combined with Perkes and Fleming, does not provide an articulated reason with rational underpinnings for combining Perkes and Fleming.

Nor does Liwerant, whether alone or in combination with Perkes or Fleming, disclose or suggest "determining whether a time associated with a most recently received communication from the client system is within a certain time period" and "based on the determining, evaluating whether to send the image to the client system via the communications link or via a mechanism other than the communications link."

At most Liwerant describes sending a copy of content to a user by recording the content on a CD-ROM and sending it via the postal service. (Liwerant, ¶ [0052.]

Liwerant does not disclose or suggest "a time associated with a most recently received communication" from a user. Nor does Liwerant disclose or suggest "determining whether a time associated with a most recently received communication from the client system is within a certain time period," as recited. Nor does Liwerant disclose "evaluating whether to send the image to the client system via a communications link or via a mechanism other than the communications link" based on the recited determination.

The Examiner's citation to Perkes as disclosing sending content via the Internet and to Liwerant as sending content via a CD-ROM does not satisfy the Examiner's burden. In particular, the Examiner has not cited a reference or combination of references that discloses or suggests "based on the determining, evaluating whether to send the image to the client system via the communications link or via a mechanism other than the communications link." At most, Perkes and Liwerant each disclose sending content via a single mechanism – the Internet or the postal service, respectively.

For at least these reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of independent claim 1, and also do not support a rejection of dependent claims 2-4, 7, 8, 52, 58, 62 and 63.

Independent claim 37, as amended, recites:

> a component that is configured to determine, for a package of images that is to be distributed to a client system, whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link.

Applicants respectfully submit that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. For at least the reasons discussed above in reference to independent claim 1, Perkes does not disclose or suggest a determination that is made based on "a time associated with a most recently received communication." Moreover, Perkes does not disclose or suggest "a

component that is configured to <u>determine ... whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link</u>," as recited. Perkes either sends a broadcast segment to a viewer via the Internet or not at all. (Perkes, ¶¶ [0078], [0125].)

In addition, for at least the reasons discussed above in reference to independent claim 1, Fleming fails to disclose:

> a component that is configured to determine, for a package of images that is to be distributed to a client system, whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link,

as recited by claim 37, whether alone or in combination with Perkes. While Fleming describes determining whether a communication is received within a threshold or time limit, unlike applicants' techniques, Fleming fails to disclose or suggest "a component that is configured to <u>determine ... whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link</u>," as recited.

For at least the reasons discussed above in reference to independent claim 1, Liwerant also fails to disclose or suggest:

> a component that is configured to determine, for a package of images that is to be distributed to a client system, whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link,

as recited by claim 37, whether alone or in combination with Perkes or Fleming. At most Liwerant describes sending a copy of content to a user by recording the content

on a CD-ROM and sending it via the postal service. (Liwerant, ¶ [0052.] Liwerant does not disclose or suggest any indication of "<u>when the client system last communicated with the image distribution computing system via a communications link</u>." Nor does Liwerant disclose "a component that is configured to <u>determine ... whether to distribute the package of images to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link</u>," as recited.

For at least these reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of independent claim 37, and also do not support a rejection of dependent claims 38-39, 41, 43-45, and 53.

Independent claim 46, as amended, recites "determining whether to send an image to the client system via the Internet or via another mechanism based on when a heartbeat communication was last received by the client system."

Applicants respectfully submit that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. For at least the reasons discussed above in reference to independent claim 1, Perkes does not disclose or suggest a determination that is made based on "<u>when a heartbeat communication was last received from the client system</u>." Moreover, Perkes does not disclose or suggest "<u>determining whether to send an image to the client system via the Internet or via another mechanism based on when a heartbeat communication was last received from the client system</u>," as recited. Perkes either sends a broadcast segment to a viewer via the Internet or not at all. (Perkes, ¶¶ [0078], [0125].)

In addition, for at least the reasons discussed above in reference to independent claim 1, Fleming fails to disclose or suggest "determining whether an image is to be sent to the client system via the Internet or via some other mechanism based on when a heartbeat communication was last received by the client system," as recited by claim 46, whether alone or in combination with Perkes. While Fleming describes determining

whether a communication is received within a threshold or time limit, unlike applicants' techniques, Fleming fails to disclose or suggest "determining whether to send an image to the client system via the Internet or via another mechanism based on when a heartbeat communication was last received from the client system," as recited.

Moreover, for at least the reasons discussed above in reference to independent claim 1, Liwerant fails to disclose or suggest "determining whether to send an image to the client system via the Internet or via another mechanism based on when a heartbeat communication was last received by the client system," as recited by claim 46, whether alone or in combination with Perkes or Fleming. Liwerant does not disclose or suggest any indication of "when a heartbeat communication was last received by the client system." Nor does Liwerant disclose or suggest "determining whether to send an image to the client system via the Internet or via another mechanism based on when a heartbeat communication was last received from the client system," as recited.

Independent claim 55, as amended, recites "instructions to ... in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, send the image to the client system via the communications link."

A version of this claim feature was previously recited in independent claims 1 and 55. It is unclear to applicants whether the Examiner believes that Perkes or Fleming discloses this feature, whether alone or in combination. On the one hand, the Examiner cites Perkes at paragraph [0078]-[0079] as disclosing "determining whether time associated with a most recently received communication from the client system is within a certain time period" and "if it is determined that time associated with the most recently received communication from the client system, sending the image to the client system via the communication link." In particular, the Examiner cites Perkes' "on/off line status of the viewers computer is determined by the Master Agent." (Office Action, Feb. 5, 2010, p. 3.) On the other hand, the Examiner states that "Perkes does not explicitly disclose 'determining that time associated with the most recently received

communication from the client is not within certain time period.'" The Examiner cites Fleming at Figure 1 and paragraphs [0018], [0020], [0023], [0025], and [0027]-[0028] to cure this deficiency. (Office Action, Feb. 5, 2010, pp. 4, 21.) Accordingly, applicants address both Perkes and Fleming herein.

Applicants respectfully submit that neither Perkes nor Fleming, whether alone or in combination, discloses or suggests "instructions to ... in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, send the image to the client system via the communications link."

At least for the reasons discussed above in reference to independent claim 1, the cited portion of Perkes does not disclose or suggest a determination that is made based on "a time associated with the most recently received communication from the client system." Moreover, Perkes does not disclose or suggest "instructions to ... in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, send the image to the client system via the communications link," as recited.

Nor does Fleming, whether alone or in combination with Perkes, disclose or suggest "instructions to ... in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, send the image to the client system via the communications link."

As described above, the cited portions of Fleming describe an administrative function performed by a distributed system to detect failure of one or more networks or processes. However, while Fleming describes determining whether a communication is received within a threshold or time limit, unlike applicants' techniques, Fleming takes no action if it is determined that the communication is received within the threshold. Fleming does not disclose or suggest "instructions to ... send the image to the client system via the communications link," or any other action, "in response to determining

that the time associated with the most recently received communication from the client system is within the certain time period," as recited.

For at least these reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of independent claim 55, and also do not support a rejection of dependent claims 57 and 58.

E.   New Claims

New claim 58 depends from independent claim 1, which is discussed above in detail. For at least these above reasons, the applied references do not support a Section 103 rejection of new claim 58.

New claim 58 also recites "determining whether a time at which the image is to be distributed by the distribution system to the client system is within a threshold time period of the most recently received communication from the client system." The applied references neither teach nor suggest this additional feature recited in new claim 58.

Applicants respectfully submit that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. For example, at most, Fleming determines whether a communication is received within a threshold or time limit of a previously received communication. Fleming makes no determination of "whether a time at which the image is to be distributed by the distribution system is within a threshold time period of a most recently received communication from the client system." At most, Perkes describes determining the on line or off line status of a viewer's computer. Perkes does not disclose or suggest "determining whether a time at which the image is to be distributed by the distribution system to the client system is within a threshold time period of the most recently received communication from the client system." Nor does Liwerant or any of the other applied references disclose this recited feature. For at least these additional and independent reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of new claim 58.

New claim 59 depends from independent claim 37, which is discussed above. For at least these reasons, the applied references do not support a Section 103 rejection of new claim 59.

New claim 59 also recites:

> wherein the component that is configured to determine whether to distribute the package of images is configured to determine how to distribute the package to the client system based on whether a time at which the package of images is to be distributed to the client system is within a threshold time period of when the client system last communicated with the image distribution computing system via the communications link.

Applicants respectfully submit that none of the applied references, whether alone or in combination, discloses this recited feature. For example, at most, Fleming determines whether a communication is received within a threshold or time limit of a previously received communication. Fleming makes no determination of "whether a time at which the package of images is to be distributed to the client system is within a threshold time period of when the client system last communicated with the image distribution computing system via a communications link." Nor does Fleming disclose or suggest a "component that ... is configured to determine how to distribute the package to the client system" based on this determination. At most, Perkes describes determining the on line or off line status of a viewer's computer. Perkes does not disclose determining "whether a time at which the package of images is to be distributed to the client system is within a threshold time period of when the client system last communicated with the image distribution computing system via a communications link." Nor does Perkes disclose or suggest "component that ... is configured to determine how to distribute the package to the client system" based on such a determination. Nor does Liwerant or any of the other applied references disclose this recited feature. For at least these additional and independent reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of new claim 59.

New claim 60 depends from independent claim 46, which is discussed above. For at least these reasons, the applied references do not support a Section 103 rejection of new claim 60.

New claim 60 also recites:

> wherein determining whether to send the image is via the Internet or via some other mechanism is further based on whether a time at which the image is to be sent to the client system is within a threshold time period of when the heartbeat communication was last received from the client system.

Applicants respectfully submit that none of the applied references, whether alone or in combination, discloses this recited feature. For example, at most, Fleming determines whether a communication is received within a threshold or time limit of a previously received communication. Fleming makes no determination of "whether a time at which the image is to be sent to the client system is within a threshold time period of when a heartbeat communication was last received from the client system." Nor does Fleming disclose or suggest "determining whether to send the image via the Internet or via some other mechanism" based on this determination. At most, Perkes describes determining the on line or off line status of a viewer's computer. Perkes does not disclose or suggest determining "whether a time at which the image is to be sent to the client system is within a threshold time period of when a heartbeat communication was last received from the client system." Nor does Perkes disclose or suggest "determining whether to send the image via the Internet or via some other mechanism" based on such a determination. Nor does Liwerant or any of the other applied references disclose this recited feature. For at least these additional and independent reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of new claim 60.

New claim 61 depends from independent claim 55, which is discussed above. For at least these reasons, the applied references do not support a Section 103 rejection of new claim 61.

New claim 61 also recites "instructions to determine whether a time at which the image is to be distributed to the client system is within a threshold time period of the most recently received communication from the client system."

For at least the reasons discussed above in reference to new claim 58, applicants respectfully submit that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. For at least these additional and independent reasons, the applied references do not support a Section 103 rejection of new claim 61.

New claim 62 depends from independent claim 1, which is discussed above. For at least these reasons, the applied references do not support a Section 103 rejection of new claim 62.

New claim 62 also recites "in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, sending the image to the client system via the communications link." For at least the reasons discussed above in reference to independent claim 55, applicants respectfully submit that Perkes does not disclose or suggest a determination that is made based on "a time associated with a most recently received communication." Moreover, Perkes does not disclose or suggest "determining whether a time associated with a most recently received communication from the client system is within a certain time period," as recited.

In addition, for at least the reasons discussed above in reference to independent claim 55, Fleming does not disclose or suggest "in response to determining that the time associated with the most recently received communication from the client system is within the certain time period, sending the image to the client system via the communications link," whether alone or in combination with Perkes. Nor does Liwerant or any of the other applied references disclose this recited feature. For at least these additional and independent reasons, applicants respectfully submit that the applied references do not support a Section 103 rejection of dependent claim 62.

Dependent claim 63 depends from independent claim 63, which is discussed above. For at least these reasons, the applied references do not support a Section 103 rejection of new claim 63.
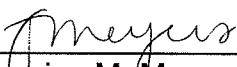
F.   Conclusion

In view of the above amendment and remarks, applicants believe the pending application is in condition for allowance and respectfully request a prompt Notice of Allowance.

If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Jessica M. Meyers at (206) 359-8000.

Respectfully submitted,
Perkins Coie LLP

Date: April 5, 2010

Jessica M. Meyers
Registration No. 65,049

Correspondence Address:
Customer No. 25096
Perkins Coie LLP
P.O. Box 1247
Seattle, Washington 98111-1247
(206) 359-8000